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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,950	10/28/2004	Katsumi Nagayoshi	P26180	8841
7055 7590 09/11/2007 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER TRA, TUYEN Q	
			ART UNIT 2873	PAPER NUMBER
			NOTIFICATION DATE 09/11/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
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## Office Action Summary

Application No.

10/510,950

Applicant(s)

NAGAYOSHI, KATSUMI

Examiner

Tuyen Q. Tra

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Moreno (U.S. Pat. 5,835,188 A).

a) With respect to claim 1, Moreno discloses the irritation generators (figure 2, item L1, L2...L10 are alternatively turned on) are activated one by one to have the user turn his line of vision toward an irritating position, so that the user can train his eye muscles without actually viewing any target object with the eyes being opened (column 2, lines 46-67).

*This relates to a device to be located in front of a person eyes containing a plurality of light sources disposed and mounted near the edge, and on the concave side of a dish shaped wall. The position of said dish shaped wall relative to the user eyes and visual axis is adjustable by means adjustable forehead and chin supports. Each individual light source is sequentially turned on and off. When one light source turns off the following light source turns on immediately or after a predetermined time delay. The sequence may be clockwise, counterclockwise, zig-zag, random or any desired pattern. The person using this invention must move his eyes to focus them on the light source that turns on sequentially.*

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject

matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moreno (U.S. Pat. 5,835,188 A) as applied to claim 1 above.

a) With respect to claim 2, Moreno discloses the irritation generators (figure 2, item L1, L2...L10 are alternatively turned on) are activated one by one to have the user turn his line of vision toward an irritating position, so that the user can train his eye muscles without actually viewing any target object with the eyes being opened (column 2, lines 46-67). However, Moreno does not implicitly disclose that (light) generator (L1, L2, ...L10) is a pressure generator, vibration generator, heater or weak-current generator.

Since light generator, pressure generator, vibration generator, heater or weak-current generator functions as a generator device for stimulating eyes muscle, the selection of a pressure generator, vibration generator, heater or weak-current generator in place of light generator is as design experience upon the environment of use to ensure optimum performance. Therefore, it would have been obvious at the time the invention was made to a person having skill in the art to replace a light generating in optical system with a pressure generator, vibration generator, heater or weak-current generator for purpose of varying ways of stimulating eye muscle.

b) With respect to claim 3, Moreno discloses the irritation generators (figure 2, item L1, L2...L10 are alternatively turned on) are activated one by one to have the user turn his line of vision toward an irritating position, so that the user can train his eye muscles

without actually viewing any target object with the eyes being opened (column 2, lines 46-67). However, Moreno does not implicitly disclose that (light) generator (L1, L2, ...L10) is a pressure generator, vibration generator, heater or weak-current generator.

Since light generator, pressure generator, vibration generator, heater or weak-current generator functions as a generator device for stimulating eyes muscle, the selection of a pressure generator, vibration generator, heater or weak-current generator in place of light generator is as design experience upon the environment of use to ensure optimum performance. Therefore, it would have been obvious at the time the invention was made to a person having skill in the art to replace a light generating in optical system with a pressure generator, vibration generator, heater or weak-current generator for purpose of varying ways of stimulating eye muscle.

c) With respect to claim 4, Moreno discloses the irritation generators (figure 2, item L1, L2...L10 are alternatively turned on) are activated one by one to have the user turn his line of vision toward an irritating position, so that the user can train his eye muscles without actually viewing any target object with the eyes being opened (column 2, lines 46-67). However, Moreno does not implicitly disclose that (light) generator (L1, L2, ...L10) is a pressure generator, vibration generator, heater or weak-current generator.

Since light generator, pressure generator, vibration generator, heater or weak-current generator functions as a generator device for stimulating eyes muscle, the selection of a pressure generator, vibration generator, heater or weak-

current generator in place of light generator is as design experience upon the environment of use to ensure optimum performance. Therefore, it would have been obvious at the time the invention was made to a person having skill in the art to replace a light generating in optical system with a pressure generator, vibration generator, heater or weak-current generator for purpose of varying ways of stimulating eye muscle.

d) With respect to claim 5, Moreno discloses the irritation generators (figure 2, item L1, L2...L10 are alternatively turned on) are activated one by one to have the user turn his line of vision toward an irritating position, so that the user can train his eye muscles without actually viewing any target object with the eyes being opened (column 2, lines 46-67). However, Moreno does not implicitly disclose that (light) generator (L1, L2, ...L10) is a pressure generator, vibration generator, heater or weak-current generator.

Since light generator, pressure generator, vibration generator, heater or weak-current generator functions as a generator device for stimulating eyes muscle, the selection of a pressure generator, vibration generator, heater or weak-current generator in place of light generator is as design experience upon the environment of use to ensure optimum performance. Therefore, it would have been obvious at the time the invention was made to a person having skill in the art to replace a light generating in optical system with a pressure generator, vibration generator, heater or weak-current generator for purpose of varying ways of stimulating eye muscle.

***Response to Amendment***

5. Applicant's arguments filed 07/17/2007 have been fully considered but they are not persuasive.

Applicant argue that "the irritation will be caused by the particular irritation generator, such as a pressure generator, a vibration generator, a heater, or a weak current generator. As the irritation is generated on the user's skin, the user moves his eyes toward the source of the irritation (Remark, page 3), "particularly since the LED's do not contact the user's body", "Further, as clearly shown in the figures and as described in the specification, the LED's L1-L10 are spaced a distance away from the user's face and head. In this regard, please note that the LED's are mounted on the wall 12, which is mounted on the forehead support 18 and chin support 24. Only the forehead seat 23 and the chin seat 29 contact the face or head of the user. Clearly, the LED's do not contact the face or head of the user. Moreover, since the LED's must be seen for the MORENO device to operate, the MORENO device could not be constructed nor applied to the user's face such that the LED's would contact the user's face or head. In other words, in the MORENO device, the LED's could not contact the user's skin (in Remark, page 5).

Applicant should be noted that LED in Monreno's device function as irritation generator in term of light irritation generator or optically irritation generator as interpreted by examiner. Applicant argues the particular irritation generator, such as a pressure generator, a vibration generator, a heater, or a weak current generator, but fails to disclose these particulars irritation generator in claim. Although the claim is

interpreted in light of the specification, limitations from the specification are not read into the claims. Therefore, Monreno's structure still reads on applicant's claim 1.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., LED does not contact the user's body) are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuyen Q. Tra whose telephone number is 571-272-2343. The examiner can normally be reached on 9:30-6:00.




If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TT

February 26, 2007

  
RICKY MACK  
SUPERVISORY PATENT EXAMINER